

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
November 26, 2007

D051787 Jose H. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Jose H. has notified the court that a petition for writ of mandate under California Rules of Court, rule 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.

D049717 People v. Camacho

The judgment is affirmed, with the exception that Camacho's admissions regarding the on-bail, prior strike and prior serious felony sentencing enhancement are reversed, along with the sentencing enhancements imposed. The matter is remanded to the trial court for a new adjudication of those allegations, either by admission or trial, and for resentencing. Irion, J.; We Concur: Haller, Acting P.J., McDonald, J.

D050855 In re Nunez on Habeas Corpus

The petition is denied.

D051152 In re Juan Z. et al., Minors

The orders are affirmed. Aaron, J.; We Concur: Nares, Acting P.J., Irion, J.

D051960 Volpe v. Superior Court of San Diego County/The People

All proceedings in the trial court are stayed pending further order of this court. Real party is directed to file a response to the petition on or before December 10, 2007.

D051523 In re Walker on Habeas Corpus

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
November 27, 2007

D050406 Rosales v. Imperial County Superior Court

Judgment reversed. Rosales to recover her costs. Benke, Acting P.J.; We Concur: Huffman, J., Haller, J.

D049485 People v. Pearce

The judgment is affirmed. Benke, Acting P.J.; We Concur: Huffman, J., Nares, J.

D050996 People v. Millan

The judgment is affirmed. McConnell, P.J.; We Concur: McDonald, J., Irion, J.

D051543 In re Tyler H., a Juvenile

The appeal is dismissed. Benke, Acting P.J.; We Concur: Huffman, J., Irion, J.

D052002 In re O'Shell on Habeas Corpus

The petition is denied.

D051351 In re Acosta on Habeas Corpus

The petition is denied.

D050772 In re C.H., a Minor

The orders are affirmed. Aaron, J.; We Concur: Benke, Acting P.J., McDonald, J.

**D052023 M.E. Sleeter Construction Inc., v. Superior Court of San Diego
County/Malone**

The petition is denied.

D046967 Sun Plumbing Company, Inc. v. Brehm Homes

The judgment is affirmed. Each party shall bear its own costs on appeal. McDonald, J.; We Concur: Huffman, Acting P.J., Haller, J.

D050977 In re Xavier G. et al., Juveniles

The judgment is affirmed. CERTIFIED FOR PUBLICATION
Aaron, J.; We Concur: Huffman, Acting P.J., McIntyre, J.

D051357 Stephen v. Pittman et al.

The petition is denied.

D051946 Hofelich v. State of California

Because appellant did not timely pay the filing fee, the appeal is dismissed. (Cal. Rules of Court, rule 8.100(c)(5).)

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
November 27, 2007 (Continued)

D052018 People v. Sanguino

Defendant's "Motion for Requesting a Late Notice of Appeal" received on November 20, 2007, is DENIED. The appeal is DISMISSED.

D051575 In re Stephen on Habeas Corpus

The petition is denied.

D051289 In re Malvia on Habeas Corpus

The petition for rehearing is denied.

D051590 In re Stephen on Habeas Corpus

The petition is denied.

D051390 Stephen v. Superior Court of San Diego County/People

The petition is denied.

D052034 Franks v. Superior Court of San Diego County/Marquez

The parties are advised the court will not decide the petition/request for stay until provided with an order after hearing and a reporter's transcript of the November 14, 2007 hearing.

D051695 Alejandra T. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Richard M. has notified the court that a petition for writ of mandate under California Rules of Court, rule 8.452a and 5.600 will not be filed as there are no viable issues for writ review.

No timely petition for writ relief has been filed for Alejandra T. The notice of intent is deemed to be abandoned. The case is dismissed.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
November 28, 2007

D050240 People v. Weston

The judgment is affirmed. McDonald, J.; We Concur: Huffman, Acting P.J., Nares, J.

D051986 Lais v. Kolender et al.

Request for Permission to Appeal received by this court on November 27, 2007, is DENIED. (Code of Civ. Proc., § 391.7, subd. (b).) The appeal filed with the Superior Court on October 29, 2007, is DISMISSED. The request for a fee waiver is DENIED as moot.

D043383 Castaneda v. Olsher et al.

On September 7, 2005, this Court reversed the trial court's granting of a nonsuit in favor of Respondent and awarded costs to Appellant in the above-entitled case. On July 30, 2007, the Supreme Court reversed our judgment and remanded the matter. By remittitur date October 24, 2007, this Court was directed to award costs, if any.

The parties are to bear their own costs in this review.

D051409 People v. Davis

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is DISMISSED and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.316.)

D051518 In re Angel P., Juvenile

Appellant Efrain P. has failed to file a brief after notice given pursuant to California Rules of Court, rules 8.412(d)(1)(A), and 8.416(g). The appeal of Efrain P. is dismissed.

D051984 Katz v. Superior Court of San Diego County/Lidak Pharmaceuticals, Inc.

The petition for writ of certiorari, request for judicial notice and response have been read and considered by Justices Benke, Huffman and Nares.

The request for judicial notice is granted. The stay issued November 13, 2007 is vacated. The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
November 29, 2007

D051260 In re Trinity M., a Juvenile

The judgment is affirmed. McIntyre, J.; We Concur: Benke, Acting P.J., Irion, J.

D050397 People v. Sosa

The judgment is affirmed. McConnell, P.J.; We Concur: Huffman, J., O'Rourke, J.

**D051568 Regents of the University of California v. Superior Court of San Diego
County/Wanner**

The petition is denied.

D050525 Gorman v. Superior Court of San Diego County/People

The petition is denied.

D051526 In re McNeal on Habeas Corpus

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

November 29, 2007 (Continued)

D051553 In re Garcia on Habeas Corpus

The petition for writ of habeas corpus has been read and considered by Justices Huffman, Nares and Irion. We take judicial notice of petitioner's direct appeal, No. D033690, and habeas petition considered with the appeal, No. D034943.

A jury convicted petitioner of corporal injury to a spouse and assault with great bodily injury with enhancements. In a subsequent proceeding, the trial court found petitioner had prior felony convictions, and served a prior prison term. Petitioner was sentenced to 40 years to life, which included two five-year enhancements pursuant to Penal Code section 667, subdivision (a)(1). We affirmed the judgment in No. D033690, and denied related habeas petition No. D034943. The California Supreme Court denied review on November 15, 2000.

Petitioner filed a habeas petition in the trial court. Petitioner argued he was improperly sentenced to two separate five-year enhancements under Penal Code section 667, subdivision (a) because his two prior convictions arose from the same case and the charges were brought and tried jointly. Petitioner also argued both trial and appellate counsel were ineffective for failing to raise this issue. The People agreed with petitioner that the second enhancement under Penal Code section 667, subdivision (a) was in error, and did not oppose granting the writ. The trial court therefore granted the writ and issued an amended abstract of judgment. Because the People asserted the error was not a result of ineffective assistance of counsel, and based on its grant of relief, the trial court made no findings regarding ineffective assistance of counsel.

In the instant petition for writ of habeas corpus petitioner argues the ineffective assistance of counsel claim he presented to the trial court: that trial and appellate counsel were ineffective for failing to argue he was improperly sentenced to two separate five-year enhancements under Penal Code section 667, subdivision (a) because his two prior convictions arose from the same case and the charges were brought and tried jointly.

To make a claim of ineffective assistance of trial and appellate counsel, the petition must state facts and contain evidence to show: (1) the attorney's performance was deficient, and (2) the deficiencies prejudiced the trial or appellate result. (*Strickland v. Washington* (1984) 466 U.S. 668, 687; *Smith v. Robbins* (2000) 528 U.S. 259, 285; *In re Smith* (1970) 3 Cal.3d 192, 202.)

Petitioner's claim fails because he can no longer show prejudice. (*Strickland v. Washington, supra*, at p. 687.) He obtained the relief he sought in the trial court and his sentence was corrected. Even if this court were to find counsel ineffective on the grounds petitioner alleges, this court could afford petitioner no more relief than he has already obtained.

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
November 30, 2007

D051582 In re McNeal on Habeas Corpus

The petition is denied.

D048831 McWethy v. Elansari

Order affirmed. Respondent to recover his costs of appeal. Benke, J.; We Concur: McConnell, P.J., Aaron, J.

D048669 Cheng v. Ellis et al.

The judgment is affirmed. Aaron, J.; We Concur: McIntyre, Acting P.J., O'Rourke, J.

D049070 People v. Parda

The judgment is affirmed. McConnell, P.J.; We Concur: Aaron, J., Irion, J.

D050866 In re David O., a Juvenile

The judgments are affirmed. O'Rourke, J.; We Concur: McIntyre, Acting P.J., Aaron, J.

D049753 People v. Stuart

The judgment is modified by staying the sentence for obtaining aid by misrepresentation, striking the \$400 restitution fine, and reducing the \$400 suspended parole revocation fine to \$200. As so modified, the judgment is affirmed. The superior court is directed to prepare an amended abstract of judgment reflecting one \$200 restitution fine and one suspended \$200 parole revocation fine in each case, and properly labeling the two counts in case No. CD173158 as "case A" and the count in case No. CD191213 as "case B." McIntyre, J.; We Concur: McConnell, P.J., Nares, J.

D051519 The Rossbacker Firm et al. v. Superior Court of San Diego County/Augusta

The petition is denied.

D048933 Bratcher v. Automobile of Southern California

The postjudgment order denying ACSC's motion for attorney fees is affirmed. Irion, J.; We Concur: O'Rourke, Acting P.J., Aaron, J.

D049201 Butler v. Rand

The judgment and posttrial orders are affirmed. Butler is awarded his costs of appeal. McIntyre, Acting P.J.; We Concur: O'Rourke, J., Irion, J.

D049775 KMS Courier Inc., et al. v. McKesson Corporation

The judgment is affirmed. The customer defendants are awarded their costs. McIntyre, Acting P.J.; We Concur: O'Rourke, J., Aaron, J.

D049853 People v. Peaches

The judgment is affirmed. McIntyre, J.; We Concur: Nares, Acting P.J., Aaron, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
November 30, 2007 (Continued)

D048403 In re Marriage of Magre

The order is affirmed. Susan is entitled to costs on appeal. McConnell, P.J.; We Concur: Aaron, J., Irion, J.

D050757 In re W. H., a Juvenile

The judgment is affirmed. Irion, J.; We Concur: McConnell, P.J., O'Rourke, J.

D048328 Bratcher v. Automobile Club of Southern California

The judgment is affirmed. Irion, J.; We Concur: O'Rourke, Acting P.J., Aaron, J.

D051851 Maria V. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for Petitioner Maria V. has notified the court that a petition for writ of mandate under California Rules of Court, rule 8.452 and 5.600 will not be filed. The case is dismissed.

D051947 Schwettnann v. Superior Court of Imperial County/Olsen

The petition is denied.

D051589 In re Cooley on Habeas Corpus

The petition is denied.

D052013 Trinity R. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The petition for writ of mandate and request for judicial notice have been read and considered by Justices Huffman, Nares and Irion. The request for judicial notice of the record on appeal is granted. The petition is denied.

D052019 Cain v. Superior Court of San Diego County/Phillips et al.

The petition is denied.

D052072 In re Marriage of Rios

The "motion for stay of order directing sale of property" is treated as a petition for writ of supersedeas. The petition for writ of supersedeas and request for stay have been read and considered by Justices Benke, Huffman and McIntyre. The petition is denied.